

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

JACOB JAMES KELLY,
Institutional ID No. 118728

Plaintiff,

v.

No. 5:21-CV-00175-H

OLIVIA CAUDILLO, *et al.*,


Defendants.

**ORDER ACCEPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

The United States Magistrate Judge made findings, conclusions, and a recommendation for disposition of this case. Specifically, the Magistrate Judge recommended that the Court (a) require Defendant Captain Vasquez to answer Plaintiff's claim of sexual assault; (b) stay Plaintiff's claim against Defendant Charles Miller, III, for excessive force until Plaintiff's criminal charges arising from the same event are resolved, and (3) dismiss with prejudice Plaintiff's remaining claims against all other defendants for failure to state a claim. Plaintiff filed objections. The District Court has made a de novo review of the relevant portions of the findings and recommendations and finds that the objections should be overruled. The Court reviewed the remainder for plain error. Finding none, the Court accepts and adopts the findings, conclusions, and recommendation of the United States Magistrate Judge.

The Court therefore orders:

1. The Court will enter a separate order directing service and requiring Defendant Captain Vasquez, to answer or otherwise plead to Plaintiff's sexual assault allegation.
 2. Plaintiff's individual capacity claim that Defendant Charles Miller, III, subjected him to excessive force is stayed pending the resolution of Plaintiff's related state criminal proceedings. Plaintiff must file a motion to reopen this case within 30 days after the state finally resolves the pending criminal charges against him if he still wishes to pursue his claims for monetary relief. Plaintiff must attach to his motion a copy of any relevant state-court record showing that the case has concluded.
 3. Plaintiff's remaining claims are dismissed with prejudice under 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim. There is no just reason for delay in entering a final judgment and final judgment will be entered as to these claims and Defendants pursuant to Federal Rule of Civil Procedure 54(b).
 4. The caption of this case is changed to *Jacob James Kelly v. Charles Miller, III, et al.*, to reflect that the only remaining defendants in this case are Charles Miller, III, and Captain Vasquez.
 5. All relief not expressly granted, and any pending motions are denied.
- Judgment will be entered accordingly.
- So ordered on March 12, 2023.



JAMES WESLEY HENDRIX
United States District Judge